

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I, the amendment of ARM	)	PROPOSED ADOPTION,
2.21.3702, 2.21.3703, 2.21.3707,	)	AMENDMENT, AMENDMENT AND
2.21.3708, 2.21.3709, 2.21.3719,	)	TRANSFER, AND REPEAL
2.21.3720, 2.21.3721, 2.21.3723,	)	
2.21.3724, 2.21.3726, 2.21.3728,	)	
2.21.3735, the amendment and	)	
transfer of ARM 2.21.3705, and the	)	
repeal of ARM 2.21.3704 and	)	
2.21.3715 pertaining to recruitment and	)	
selection	)	

TO: All Concerned Persons

1. On July 12, 2010, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on July 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Linda Davis, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; Montana Relay Service 711; or e-mail ldavis@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I COMPLIANCE WITH MILITARY SELECTIVE SERVICE ACT

(1) Agencies shall verify that every male person hired on a full-time or part-time basis in permanent or temporary positions has registered in compliance with the federal Military Selective Service Act, except those excluded in (2) of this rule. If an individual has reached his 18th birthday and is under the age of 26, agencies shall require documentation showing he has registered with Selective Service or is exempt from registration. If an individual is age 26 or older and was required to register but has not done so, the individual shall prove to the agency job representative his failure to register was neither known nor willful.

(2) Agencies may exclude certain individuals from their verification procedures who:

- (a) were born on or before December 31, 1959;
- (b) have been continuously employed in state government without a five-day break in service before July 1, 2001;

- (c) are transferring without a five-day break in service to another position in an agency or in state government;
- (d) have already provided information confirming selective service status; or
- (e) are hired as independent contractors or as employees of temporary service contractors.

(3) Agency managers may determine the types of documentation an individual shall provide showing compliance with the federal Military Selective Service Act. At a minimum, agencies shall require a written statement of selective service status.

(4) Agencies shall request the documentation described in this rule at the time they make an employment offer. Agencies may adopt reasonable timelines for individuals to provide the documentation. The Department of Administration has published the Montana Selective Service Compliance Guide to assist agencies in complying with this rule and the Military Selective Service Act. The guide provides examples of adequate documentation and information about who must register with selective service. If an individual does not provide documentation as required, agencies shall:

- (a) rescind an employment offer; or
- (b) terminate the individual's employment.

(5) Agency managers shall file the Statement of Selective Service Status Form in the employee's permanent personnel file.

AUTH: 2-15-130, MCA

IMP: 2-15-130, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-15-130, MCA, addressing compliance with the federal Military Selective Service Act, requires that the Department of Administration adopt rules to implement its provisions. New Rule I is proposed to meet this requirement. New Rule I provides guidance to agencies on how to verify all males hired on a full-time or part-time basis have registered in compliance with the federal Military Selective Service Act. The department is proposing the exceptions to help agencies determine state employees who do not have to confirm selective service status and who have an exemption in the statute. The department is proposing to allow agency managers to determine the types of documentation they will accept.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.21.3702 POLICY AND OBJECTIVES ~~(1) It is the policy of the state of Montana to:~~

~~(a) recruit and select employees on the basis of merit and job-related qualifications without consideration of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin as provided in 49-3-201, MCA, or sexual orientation as provided in the Nondiscrimination-Equal Employment Opportunity (EEO) policy, ARM 2.21.4001, et seq.;~~

~~(b) provide qualified applicants with a reasonable opportunity to learn about, apply for, and be considered for positions when external recruitment is conducted.~~

~~(2) Agencies may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require such distinction. To establish a BFOQ for a position, an agency must demonstrate that the distinction is reasonably necessary to the normal operations of the agency's business or that the differentiation is based on reasonable factors as provided in 49-3-103, MCA. This means the agency must present evidence that a definable group of employees would be unable to perform the job safely and efficiently or that it would be impossible or highly impractical to consider the qualifications of each such employee and that the BFOQ is reasonably necessary to the operation of the agency.~~

~~(3) An agency may not select an individual for permanent status employment without a competitive recruitment process except as allowed in ARM 2.21.3705.~~

~~(4) It is the objective of this policy to establish minimum standards for fair and consistent treatment of applicants and employees in recruitment and selection that comply with relevant state and federal laws, regulations, and rules.~~

~~(5) Nothing in this policy is intended to preclude the use of recruitment and selection procedures that assist in the achievement of affirmative action objectives. Compliance with these rules does not relieve an agency of any obligations they may have to undertake affirmative action to assure equal employment opportunity.~~

(1) This policy, consistent with applicable state and federal laws, establishes minimum standards for equitable and consistent treatment of applicants and employees in recruitment and selection for state jobs.

(2) Montana state government is committed to:

(a) attracting and retaining a highly qualified workforce based on competencies and job-related qualifications;

(b) providing applicants with a reasonable opportunity to learn about, and apply and be considered for positions when external recruitment is conducted; and

(c) using a competitive recruitment process to select individuals for permanent status employment.

(3) This policy covers all agencies in Montana's executive branch except the Montana University System, the Montana State Fund, elected officials, personal appointed staff of elected officials, and any other position specifically excluded under 2-18-103 and 2-18-104, MCA.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-103, 49-3-201, MCA

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

~~(1) "Adverse impact" means that members of a group identified and protected from discrimination such as sex, race, or ethnicity who experience a substantially lower rate of selection in hiring, promotion, pay rates, and other benefits of employment. "Applicant" means an individual who satisfies the following three criteria:~~

(a) the individual has indicated an interest in the particular position;

(b) the agency considers the individual for employment in particular position;  
and

(c) the individual has followed the agency's standard procedures for submitting applications, resumes, or both.

~~(2) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget, as provided in 2-18-101, MCA, unless excepted in 2-18-103 or 2-18-104, MCA.~~

~~(3) "Bona fide occupational qualification (BFOQ)" means a legal exception to an otherwise discriminatory hiring practice that is allowed where the reasonable demands of a position require an age, physical or mental disability, marital status, sex, religion, or national origin distinction. "Reasonable demands" is to be strictly construed, as provided in 49-2-402, MCA, and the burden rests with the department to demonstrate that the exemption should be granted.~~

~~(4) and (5) remain the same, but are renumbered (2) and (3).~~

~~(6)(4) "Internal recruitment" means the open, competitive solicitation of applications that, at the agency's discretion of the agency, is limited to:~~

~~(a) current employees of the agency, the division, or other appropriate internal unit; or~~

~~(b) employees in a reduction in force pool who have been laid off from the agency or participating in the job registry. ; or~~

~~(c) job registry participants.~~

~~(7) "Internet applicant" means an individual who satisfies the following three criteria:~~

~~(a) the agency has acted to fill a particular position;~~

~~(b) the individual has followed the agency's standard procedures for submitting applications; and~~

~~(c) the individual has indicated an interest in the particular position.~~

~~(8)(5) "Job analysis" means the process of gathering, analyzing, and creating information about a position in order to identify the essential duties, functions, roles, and competencies required to perform the work of the position, and the written documentation of the results of the analysis.~~

~~(9) "Job expert" means a person who is knowledgeable about the position being filled or a person who has expertise in the recruitment and selection process.~~

~~(10)(6) "Job-related" means criteria shown by a job analysis to be directly related to specific duties in a job or to be directly related to a qualification or competency a necessary to perform a job qualification or competency.~~

~~(11)(7) "Qualifications" means the minimum competencies needed to perform the job and the education and experience associated with successful job performance requirements needed to perform the job on the first day of employment and the education, experience, and competencies associated with successful job performance.~~

~~(12) "Reasonable accommodation" means:~~

~~(a) a change in the work environment or in the way work is accomplished that enables an individual with a disability to enjoy equal employment opportunities; or~~

~~(b) adjustments to work schedules to accommodate an individual's religious beliefs or practices. (Types of reasonable accommodations and the criteria for evaluating undue hardship can be found in the reasonable accommodation guide~~

and the Nondiscrimination-Equal Employment Opportunity Guide available from the State Personnel Division, Department of Administration web site:  
<http://hr.mt.gov/HRServices/policiesguides.asp>.)

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3707 INTERNAL RECRUITMENT (1) ~~An agency may limit internal recruitment to:~~

~~(a) current employees, as defined in 2-18-101, MCA, of the agency, the division, or other appropriate internal unit; or~~

~~(b) current agency employees and employees who have been laid off from the agency within one year of the effective date of layoff.~~

~~(2) An agency may recruit from the job registry before soliciting from the general public.~~

~~(3) An agency may recruit internally to the agency and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement.~~

~~(4) Internal vacancy announcements must be posted according to agency policy. The internal vacancy announcements should contain information similar to that required in ARM 2.21.3709.~~

(1) Agency managers shall use a competitive process when recruiting internally to fill permanent positions.

(2) Agency managers may:

(a) limit the internal competitive recruitment process to:

(i) current employees of the agency, division, or other appropriate internal unit; or

(ii) current employees and employees who have been laid off from the agency within one year of the effective date of layoff. Reinstated employees are not required to participate in a competitive process to be rehired as provided in Implementing a Reduction In Force, MOM Policy 3-0155;

(b) limit recruitment to laid-off employees participating in the job registry as provided in Implementing a Reduction In Force, MOM Policy 3-0155. Agency managers are encouraged, but not required, to consider applicants included in the job registry before recruiting from the general public; or

(c) recruit internally to the agency, division, or other appropriate internal unit and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement.

(3) Agency managers may consider temporary employees in an internal recruitment; however, student interns and short-term workers are not eligible to compete.

(4) Agency managers may reassign current employees to temporary assignments not exceeding two years without a competitive process. Agency managers shall use a competitive process when filling the position on a permanent basis.

(5) Agency managers shall post internal vacancy announcements according to agency policy. The internal vacancy announcements should contain information similar to that required in ARM 2.21.3709, Vacancy Announcements.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3708 EXTERNAL RECRUITMENT ~~(1) An agency must use an external recruitment process unless the agency:~~

- ~~(a) fills a position through internal recruitment;~~
- ~~(b) fills a position with an applicant participating in the job registry;~~
- ~~(c) fills a position with a participant in on-the-job training, work experience, or other programs conducted under the Workforce Investment Act such as dislocated worker programs, adult and youth programs, welfare-to-work programs, Native American programs, and school-to-work programs;~~
- ~~(d) recalls a seasonal employee, as defined in 2-18-101, MCA, who was selected using a competitive process;~~
- ~~(e) selects a short-term worker or student intern as defined in 2-18-101, MCA. A short term worker or student intern may be selected without going through a competitive recruitment process; or~~
- ~~(f) the agency fills a position with a retiree in accordance with ARM 2.21.3705.~~

~~(2) A vacancy announcement for all positions open to external recruitment must be posted with the State of Montana Employment Information website: <http://mt.gov/statejobs/statejobs.asp> for at least five working days. The State of Montana Employment Information website is maintained by the State Personnel Division, Department of Administration.~~

~~(3) Each agency must post vacancy announcements for temporary employment, as defined in 2-18-101, MCA, or for permanent positions being filled on a temporary basis with the State of Montana Employment Information website: <http://mt.gov/statejobs/statejobs.asp> unless the agency decides, on a case-by-case basis, that the position must be filled immediately or other conditions exist that make it impractical to do so.~~

~~(4) An agency may distribute vacancy announcements to appropriate recruitment sources in an endeavor to achieve a diverse workforce from all segments of society.~~

~~(5) An agency may limit external recruitment advertising to a geographic area; however, all properly completed applications received by the closing date must be considered, regardless of whether the applicant resides within that geographic area.~~

~~(6) An agency may use an applicant search service or an Internet recruitment service to accept applicants including Internet applicants for vacant positions that are opened to external recruitment.~~

(1) Agency managers shall use an external competitive recruitment process unless the agency:

- (a) fills a position through internal recruitment, as provided in ARM 2.21.3707, Internal Recruitment;

(b) fills a position with a participant in on-the-job training, work experience, or other programs such as those conducted under the federal Workforce Investment Act. Examples include:

- (i) dislocated worker programs;
- (ii) adult and youth programs;
- (iii) welfare-to-work programs;
- (iv) Native American programs;
- (v) veterans' employment and disabled veterans outreach programs;
- (vi) programs authorized under Title I, parts A and B of the federal

Rehabilitation Act; and

- (vii) school-to-work programs;

(c) recalls a seasonal employee, as defined in 2-18-101, MCA, who was originally selected using a competitive process;

(d) selects a short-term worker or student intern as defined in 2-18-101, MCA; or

(e) fills a position with a retiree consistent with ARM 2.21.3705 (2.21.3710), Limited Reemployment for Retirees.

(2) Agency managers shall post a vacancy announcement for all positions open to external recruitment on the State of Montana Employment Information web site for at least five working days. The State Human Resources Division, Department of Administration, maintains the State of Montana Employment Information web site <http://mt.gov/statejobs/statejobs.asp>.

(3) Agency managers shall post vacancy announcements for temporary employment, as defined in 2-18-101, MCA, or for permanent positions being filled on a temporary basis with the State of Montana Employment Information web site, unless the agency director or designee decides the position must be filled immediately or other conditions exist that make it impractical to follow procedures outlined in this policy.

(4) Agency managers may do, but are not limited to, the following:

(a) distribute vacancy announcements to appropriate recruitment sources in an effort to achieve a diverse workforce;

(b) limit external recruitment advertising to a geographic area. However, all properly completed applications received by the closing date must be considered, regardless of whether the applicant resides within that geographic area; and

(c) seek applicants for vacant positions using an applicant search service.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3709 EXTERNAL VACANCY ANNOUNCEMENTS (1) External vacancy announcements must contain all the information required by the state's guidelines for preparing a vacancy announcement.

(2) The guidelines are incorporated by reference and available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871, or on the State Personnel Division web site: <http://hr.mt.gov/HRServices/policiesguides.asp>.

(1) Vacancy announcements must be clear, concise, and well-organized. At a minimum, they should contain all the information provided in the state's Guidelines for Preparing Vacancy Announcements found at the State Human Resources web site: <http://hr.mt.gov/hrpp/guides.mcpx> and also available from the State Human Resource Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES ~~(1) Selection procedures must be developed in advance of any review of applicant qualifications by job experts familiar with the position.~~

~~(2) Each selection procedure must include job-related criteria obtained from a job analysis.~~

~~(a) An agency should review the written position description or job profile to be sure that it accurately describes the current job duties, competencies, and qualifications.~~

~~(b) An agency should review and follow the procedures in the "Recruitment and Selection Manual" published by the State Personnel Division, Department of Administration, which is available on the State Personnel Division website: <http://hr.mt.gov/HRServices/policiesguides.asp>.~~

~~(3) Selection procedures must have written criteria against which applicant qualifications can be evaluated, such as suggested responses and a rating scale.~~

~~(4) An agency may use any selection procedure or combination of procedures that best assess the job qualifications. Provision shall be made for periodic update and review of selection procedures.~~

(1) Individuals familiar with the position shall develop selection procedures before any review of applicant qualifications.

(2) Each selection procedure must be job-related and based on a current job analysis.

(a) Agency managers shall review the written position description or job profile to ensure it accurately describes the current job duties, competencies, education, and experience to perform the job.

(b) For further guidance, agency managers may refer to the Recruitment and Selection Manual found at the State Human Resources Division web site: <http://hr.mt.gov/hrpp/guides.mcpx> and also available from the State Human Resources Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

(3) Selection procedures must include defined processes measuring the applicant's suitability for a particular position based on job requirements and ability to integrate successfully into the work unit and agency's culture.

(4) Agency managers may use any selection procedure or combination of procedures that best assess the applicant against the job qualifications. Agencies shall annually review and update their selection procedures.



AUTH: 2-18-102, MCA  
IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3720 ADMINISTRATION OF SELECTION PROCEDURES (1) ~~All applicants remaining at each step in the selection process shall be treated consistently with regard to~~ During each step in the selection processes, agency managers shall consistently apply selection procedures regarding:

(a) content of the procedure applied;  
(b) sequence of procedures;  
(c) persons involved in administering the process; and  
(d) the maximum ~~amount of~~ time allotted wherever timed procedures are used.

(2) Consistent treatment does not mean identical treatment.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3721 EVALUATION OF QUALIFICATIONS ~~(1) An agency will determine whether an applicant meets the job qualifications. Persons involved in evaluating applicant qualifications must be job experts.~~

~~(2) Job experts shall use job-related criteria, such as education and experience, suggested responses to questions, and rating scales to evaluate applicant qualifications against job qualifications.~~

~~(3) Evaluation techniques should permit an applicant to be compared against the job qualifications as well as to others in the applicant pool.~~

(1) Agency managers and individuals involved in the selection shall use job-related processes to evaluate the applicant's qualifications against the job requirements and ability to integrate successfully into the agency's culture.

(2) Agency managers and individuals involved in the selection process shall recognize the unique backgrounds and experiences of each applicant. Selection procedures must be flexible enough to elicit information about the applicant's qualifications and potential contributions to the work unit. Agency managers shall compare applicants to the job qualifications and others in the applicant pool to select the best applicant for the job and work unit.

~~(4)(3) A selection may be made~~ Agency managers may select from any of the most qualified group of applicants. The public employment hiring preferences must be applied as provided in V~~v~~eterans' E~~e~~mployment P~~p~~reference, MOM Policy 3-0172, revised October 3, 2003; P~~p~~ersons with D~~d~~isabilities E~~e~~mployment P~~p~~reference, MOM Policy 3-0171, revised February 11, 2000; and as provided in 2-18-111, MCA, H~~h~~iring preference for residents of Indian reservations for state jobs within reservation. These policies are incorporated by reference and are also available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3723 INTENTIONAL MISREPRESENTATION (1) ~~Agencies~~ Agency managers may exclude an applicant from further consideration for employment or discharge an employee if it they learns ~~that~~ an applicant intentionally misrepresented facts about ~~his or her~~ their qualifications or job history during the recruitment and selection process.

(2) ~~Applicants shall be notified that willful misstatements of qualifications may exclude them from further consideration for the position or may result in discharge from employment.~~ The state employment process (online and traditional application) includes a verification notice. The information applicants provide is subject to verification. Willful misstatements of qualifications may exclude an applicant from further consideration for the position or may result in discharge from employment.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3724 NOTIFICATION OF APPLICANTS (1) Agency managers shall notify all applicants of their status in the selection process.

(2) As provided in ARM 2.21.1428, Hiring Decision (Persons with Disabilities Employment Preference policy) and 2.21.3617, Hiring Decision (Veterans' Employment Preference policy), when an applicant claims ~~for an applicant claiming~~ an employment preference, ~~agencies~~ agency managers must shall:

- (a) provide the applicant a written notice of the hiring decision; and
- (b) maintain a record of the notification and date sent. ~~of which applicants were notified; and~~
- ~~(c) record the date the notification was sent.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3726 DOCUMENTATION (1) ~~The following documentation must be included~~ Agency managers shall document the following in the recruitment and selection process:

- (a) job information;
  - (b) screening information; and
  - (c) applicant information.
- (2) For the purposes of this subchapter, "job information" ~~means~~ includes but is not limited to:
- (a) a description of the current duties of the job;
  - (b) a copy of the vacancy announcement;
  - (c) a copy of newspaper or journal advertising, if any;
  - (d) and a list of all recruitment sources used; and
  - ~~(d)~~ (e) a copy of Internet posting, if any.
- (3) For the purposes of this subchapter, "screening information" ~~means~~ includes but is not limited to:

- (a) a copy of all selection procedures and any criteria used to evaluate qualifications ~~such as suggested responses and rating scales; and~~
- (b) the names and titles of any persons who participated in the design or administration of the selection procedures; and
- (c) a statement of why and how the hiring decision was made.

(4) For the purposes of this subchapter, "applicant information" ~~means~~ includes, but is not limited to:

- (a) all applications, supplemental question responses, scoring evaluation notes, reference checks, and any other application materials received;
- (b) ~~records or other information necessary for the applicant flow survey~~ applicants' demographic information from the applicant survey page; and
- (c) correspondence with applicants.

(5) ~~The items listed in this rule must be maintained for a period of time consistent with the employee record keeping policy, MOM Policy 3-0110, revised June 12, 1992. This policy is incorporated by reference and available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871, or on the State Personnel Division web site:~~

~~http://hr.mt.gov/HRServices/policiesguides.asp. Agencies shall maintain items listed in this rule for a period of time consistent with the General Records Retention Schedule found at http://sos.mt.gov/Records/State\_Forms.asp and also available from Records and Information Management, Montana Secretary of State, 130 Bozeman Street, P.O. Box 202801, Helena, MT 59620, telephone (406) 444-9000.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

#### 2.21.3728 ACCESS TO DOCUMENTATION AND CONFIDENTIALITY

- (1) Job information as described in ARM 2.21.3726(2) is public information.
- (2) Screening information as described in ARM 2.21.3726(3) is public information; however, an agency may maintain the confidentiality of selection procedures and criteria ~~as set forth in ARM 2.21.3726~~ if:
  - (a) the agency can establish a legitimate business need to reuse the procedures and criteria; or
  - (b) ~~the agency managers~~ determines public disclosure of the information would jeopardize the agency's ability to select the best-qualified candidate for the position.
- (3) Applicant information ~~as~~ described in ARM 2.21.3726(4) is confidential pursuant to Montana's constitutional guarantee of privacy; however, an agency may release applicant information to third parties if the agency:
  - (a) receives a ~~properly executed~~ court order;
  - (b) receives a ~~properly executed~~ release from the applicant; or
  - (c) notifies applicants, as part of the application or selection process, ~~notifies applicants~~ that upon weighing the merits of public disclosure against an applicant's individual privacy interests, the agency has determined ~~that~~ continued consideration for the position was contingent upon the applicant providing authorization for release of specified applicant information.

(4) ~~Release of Agency managers shall release~~ applicant information under (3) ~~will be made in accordance~~ consistent with the terms of the court order or release.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

2.21.3735 CLOSING (1) ~~Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable~~ This subchapter must be followed unless it conflicts with negotiated labor agreements or specific statutes, which govern to the extent applicable.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

STATEMENT OF REASONABLE NECESSITY: Following its required biennial review of rules, the Department of Administration proposes to amend 2.21.3702, 2.21.3703, 2.21.3707, 2.21.3708, 2.21.3709, 2.21.3719, 2.21.3720, 2.21.3721, 2.21.3723, 2.21.3724, 2.21.3726, 2.21.3728, and 2.21.3735 of the Recruitment and Selection policy to increase flexibility in the designing recruitment processes, emphasizing job requirements and the candidate's appropriate fit, to improve writing style and clarity, and to remove definitions that are not pertinent to or mentioned in the policy. In addition, the policy no longer references 49-3-201, MCA, which addressed nondiscrimination. Prohibition of illegal discrimination is included in the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention, MOM Policy 3-0630.

5. The rule as proposed to be amended and transferred provides as follows, new matter underlined, deleted matter interlined:

2.21.3705 (2.21.3710) LIMITED REEMPLOYMENT FOR RETIREES (1) ~~An agency may reemploy an employee who previously retired from the agency without a competitive hiring process if~~ Agency managers may reemploy, without a competitive hiring process, an employee who previously retired from the agency if:

(a) through (c) remain the same.

(2) ~~An agency must~~ Agency managers shall document the reasons for reemployment and why it was ~~determined to be~~ in the agency's best interests. The documents must be kept in employee's permanent personnel file.

(3) ~~Reemployment under this rule is subject to the hour and wage limitations set forth for retirees in 19-3-1106 and 19-20-731, MCA.~~ The hour and wage limitations set forth for retirees in 19-3-1106 and 19-20-731, MCA, apply to retiree reemployment. Questions concerning hour and wage limitations should be directed to the Montana Public Employee Retirement Administration or Montana Teachers' Retirement System.

AUTH: 2-18-102, MCA

IMP: 2-18-102, ~~49-3-201~~, MCA

STATEMENT OF REASONABLE NECESSITY: Following its required biennial review of rules, the Department of Administration proposes to amend ARM 2.21.3705 of the Recruitment and Selection policy to improve writing style and clarity. Transferring this rule places the internal recruitment and external recruitment rules more commonly used before this rule.

6. The department proposes to repeal the rules as follows:

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAY-OFF found on page 2-1105 of the Administrative Rules of Montana.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 2-18-1201, 2-18-1202, 2-18-1203, 2-18-1204, 2-18-1205, 2-18-1206, 49-3-201, MCA

2.21.3715 EQUAL EMPLOYMENT OPPORTUNITIES found on page 2-1113 of the Administrative Rules of Montana.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration proposes the repeal of ARM 2.21.3704 and 2.21.3715 because the text of these rules will now appear as part of the proposed Implementing a Reduction in Force Policy, MOM Policy 03-0155, and Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy, MOM Policy 3-0630.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Linda Davis, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; or e-mail ldavis@mt.gov, and must be received no later than 5:00 p.m., July 12, 2010.

8. Linda Davis, Department of Administration, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding employee personnel management rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State June 1, 2010.